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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11
12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 v.

16 LOUIS V. SCHOOLER and FIRST
17 FINANCIAL PLANNING
18 CORPORATION d/b/a WESTERN
19 FINANCIAL PLANNING
20 CORPORATION,

21 Defendants.

Case No.: 3:12-cv-02164-GPC-JMA

**INVESTORS' OBJECTION TO
ISSUANCE OF ORDER APPROVING
THE REVISED FOURTEENTH
INTERIM REPORT**

Ctrm: 2D

Judge: Hon. Gonzalo P. Curiel

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1 **I. Procedural Statement**

2 This objection is filed by 192 investors (“Investors”) holding partnership interests
3 in the 87 general partnerships (“GPs”) in the receivership.¹ The May 18, order (Dkt. No.
4 1296) granted Investors’ motion to intervene “to the extent that Investors seek to oppose
5 the Receiver’s orderly sale motion regarding its proposal for the disposition of
6 receivership assets.” Dkt. No. 1296 at 7, 11.

7 Investors opposed the Receiver’s orderly sale motion on the ground, among others,
8 that the plan could not be approved in the absence of current and accurate financial data
9 as required to by various authorities (Dkt. 1235 at 8-16), including the Securities and
10 Exchange Commission’s Standardized Fund Accounting Report: Civil – Receivership
11 Fund (“SFAR”). *Id.* at 11-12. The Court granted the Receiver’s orderly sale motion, but
12 directed the Receiver “to withdraw and resubmit Receiver’s Fourteenth Interim Report,
13 ECF No.1189 ... consistent with SFAR.” Dkt. No. 1104 at 24.

14 The Receiver filed a document titled “Receiver’s Revised Fourteenth Interim
15 Report” (Dkt. No. 1315), but that document, contrary to the Court’s order, was neither a
16 revised Fourteenth Interim Report nor in compliance with SFAR.

17 The Court has issued orders approving each of the Receiver’s prior 13 interim
18 reports. Since the Receiver did not serve opposing counsel with a proposed order as
19 instructed by the Court’s website,²³ Investors could not use the procedure contemplated
20 by these instructions (an email to chambers) to object. Investors therefore submit this
21 opposition to any order approving the Receiver’s Revised Fourteenth Interim Report and
22 the issuance of any order approving it.

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24 ¹ The names of the investors filing this opposition are listed in Attachment 1 filed
25 herewith.

26 ² See:

27 [https://www.casd.uscourts.gov/Court%20Info/SitePages/EmailAddressesForProposedOrd
ers.aspx](https://www.casd.uscourts.gov/Court%20Info/SitePages/EmailAddressesForProposedOrders.aspx),

28 ³ *Id.* “Opposing counsel will have one business day to e-mail chambers any objections
to the proposed order.”

II. The Revised Report Fails to Comply with the Court's Order

The May 25 order directed the Receiver “to withdraw and resubmit Receiver’s Fourteenth Interim Report... consistent with SFAR.” Dkt. No. 1304 at 24. This language seems clear enough. The original Fourteenth Interim Report covered the last quarter of 2015. Dkt. No. 1189. Consequently, the order would reasonably be interpreted to require the Receiver to file a revised Fourteenth Interim Report compliant with SFAR *for the same period*, the last quarter of 2015, the three-month period from October 1, 2015, through December 31, 2015. He did not.

Instead, the Receiver filed a Revised Fourteenth Interim Report with the same financial data contained in the original Fourteenth Interim Report for the last quarter of 2015, but the SFAR that did not cover the same period. Instead, the SFAR covered the entire 39-month period from the inception of the receivership through the end of 2015.

The SFAR shows one line item of “Increases in Fund Balance” for the entire 39-month period: “miscellaneous-other” in the sum of \$13,686,620. Dkt. No. 1315, Ex. C at 16. Once again, the Receiver provided no breakdown of these receipts, e.g., the sales of assets or repayment of loans. The SFAR shows three line items for “Decreases in Fund Balance” for the entire 39 months: \$771,206 in “Disbursement to Receiver or Other Professionals,” \$15,880,433 in “Business Asset Expenses,” and \$12,193 in “Federal and State Tax Payments.” Dkt. No. 1315, Exhibit C at 16. Once again, there was no breakdown by category of the \$15.9 million of receivership expenditures. Who got this money and why?

The Receiver’s failure to provide the Court with current and actual financial reports breaking down his receipts and expenditures has been a continuous ground for Investors’ opposition to the Receiver’s orderly sale motion (Dkt. No. 1235 at 9, 11, 12, and 13), a ground for their motion for an accounting (Dkt. No. 1258-1 at 1, 2, 10, 16, and 23), a ground for their proposed complaint in intervention. Dkt. No. 1229-1, ¶¶ 6 and 19.

1 This core question boils down to this: what financial reports has the Receiver
2 provided the Court that show where any of this money came from or where it went? This
3 cannot be found in one place. But we can look at other records for the breakdown.

4 There is one breakdown by category, but only for Western's receipts and
5 disbursements. They are attached as Exhibit B to interim reports three through fourteen.
6 If the total receipts (\$3.5 million) and disbursements (\$3.9 million) from the Exhibit B
7 statements are subtracted from the amounts shown in the Receiver's SFAR (Dkt. No.
8 1315, Exhibit C at 16) for receipts (\$13,686,620) and the business asset expenditures
9 (\$15,880,443), the differences are approximately \$10.2 million in receipts without a
10 breakdown by category and approximately \$12 million without a breakdown by category.

11 This means the Receiver's use collection and expenditure of investors' funds is
12 only validated by trust. On this point, Investors submit there is much wisdom in the
13 Russian proverb: trust but verify. This proverb could find not better application than a
14 Court overseeing Thomas Hebrank's stewardship of the investments of 3,300 investors
15 who had no voice in choosing Mr. Hebrank. Investors submit the Court should not issue
16 an order approving the Receiver's Revised Fourteenth Interim Report, Dkt. No. 1315.

17 DATED: June 22, 2016

Respectfully submitted,

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19 By: /s/ Gary J. Aguirre
20 GARY J. AGUIRRE
21 Attorney for Investors
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